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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by SBC Communications Inc.,	)	
Pacific Bell Telephone Company, and	)	WC Docket No. 02-306
Southwestern Bell Communications Services,	)	
Inc. for Provision of In-Region, InterLATA	)	
Services in California	)	

REPLY AFFIDAVIT OF GWEN S. JOHNSON

REPLY AFFIDAVIT REGARDING PERFORMANCE MEASURES

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1. I, Gwen S. Johnson, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

INTRODUCTION

2. My name is Gwen S. Johnson. I am the same Gwen S. **Johnson** who filed with the Federal Communications Commission ("FCC" or "Commission"), on behalf of Pacific Bell Telephone Company ("Pacific"), an initial affidavit ("Initial Johnson Affidavit") (App. A, Tab 12 to Pacific's Application) on September 20, 2002 in this proceeding.

PURPOSE AND SCOPE OF AFFIDAVIT

3. AT&T and XO challenge Pacific's performance plan-related assurances that the California local exchange market will remain open after Pacific receives section 271 authorization. AT&T criticizes the strength of Pacific's wholesale performance and the reliability of its performance data. AT&T and XO criticize certain aspects of the Performance Incentives Plan approved by the California Public Utilities Commission ("CPUC").'

4. My reply affidavit refutes AT&T's and XO's claims regarding Pacific's wholesale performance in California, the reliability of Pacific's performance measurements data, and the protections afforded by Pacific's Performance Incentives Plan against potential "backsliding." My affidavit begins by demonstrating that, according to performance data, Pacific continues to provide California Competitive Local Exchange Carriers ("CLECs") with a meaningful opportunity to compete in the local exchange market. In this regard,

[1] Comments of AT&T Corp., WC Docket No. 02-306 (FCC tiled October 9, 2002) ("AT&T Comments"); AT&T Comments, Declaration of Diane P. Toomey, Susan M. Walker and Michael Kalb ("AT&T Toomey/Walker/Kalb Declaration"); AT&T Comments, Declaration of Walter W. Willard ("AT&T Willard Declaration"); Comments of XO California, Inc., WC Docket No. 02-306 (FCC tiled October 9, 2002) ("XO Comments").

and as I detail further in my affidavit, two observations bear emphasis. First, the performance-related criticisms of AT&T and XO are limited to but a handful of Pacific's over 1,700 submeasures. Second, the CLECs' discussions of Pacific's performance consist of little more than a "stare and compare" recitation of the data. Neither CLEC provides any evidence that the performance it criticizes has harmed its ability to compete in the local exchange market, or otherwise provides an analysis in keeping with the "totality of the circumstances" analytical framework embraced by the Commission.

5. My reply affidavit also demonstrates that Pacific's performance data are accurate and valid, despite AT&T's criticisms. As I detail later, AT&T has no cause to complain about a performance measurements audit whose scope and methodology it helped craft and in whose later status-related conferences it participated. Moreover, the accuracy of the data relied on by Pacific in this proceeding remains unchallenged by AT&T (which merely indicates that it has initiated a data reconciliation with respect to certain data).

6. Finally, my reply affidavit refutes the assertions of AT&T and XO that the structural aspects and incentive payments, respectively, of the Performance Incentives Plan approved by the CPUC are insufficient to foster post-entry checklist compliance.

PACIFIC'S PERFORMANCE MEASUREMENTS RESULTS DEMONSTRATE CONTINUED COMPLIANCE WITH THE CHECKLIST ITEMS

7. Pacific's performance results demonstrate that Pacific continues to provide CLECs a meaningful opportunity to compete in the California local telephone market. In particular, these results demonstrate that Pacific provides California CLECs nondiscriminatory access

to the pertinent **14** point checklist items specified in Section **271** of the Telecommunications Act of 1996 ("the Act").[2]

8. According to the data, Pacific's performance met or surpassed the applicable parity or benchmark standard, in at least two of the last three months concluding in September **2002, for 92.6% (490** of **529)** of all measures (including submeasures) for which data were generated. On an individual-month basis, Pacific's statistical performance continues to equal or exceed **90%** each month. Pacific met the applicable performance standard for 91% of all measures in August and **90%** of all measures in September.

9. AT&T's and XO's criticisms of very limited aspects of Pacific's performance relative to checklist items *ii* (OSS/unbundled network elements ("UNEs")) and *iv* (unbundled local loops) do not undermine the foregoing empirical data demonstrating Pacific's overall performance for the pertinent checklist items *as* a whole. Nor do their criticisms undermine Pacific's performance for the two checklist items they target. In particular, Pacific met or surpassed the applicable parity or benchmark standard, in at least two of the last three months, for **96.8% (122** of **126** opportunities) of all checklist item *ii* measures for which data were generated in at least two of the last three months.[3] Pacific's performance also met or surpassed the applicable parity or benchmark standard, in at least

[2] Pacific's performance measurement data during the three-month period concluding with July 2002 (*i.e.*, May through July 2002) were presented in my initial affidavit (Initial Johnson Affidavit, Attachments A, B and C). Pacific's performance data for August 2002 were presented in an ***ex parte*** filed with the Commission on September 24,2002. ***See Ex Parte*** Letter of Geoffrey M. Klineberg on behalf of SBC to Marlene Dortch, FCC (Sept. 24, 2002). Pacific's performance data for September 2002, and for the overall five-month period concluding with September 2002 (*i.e.*, May through September 2002) were presented in an ***ex parte*** filed with the Commission on October 28,2002. ***See Ex Parte*** Letter of Colin S. Stretch on behalf of SBC to Marlene Dortch, FCC (Oct. **28,** 2002).

[3] Checklist item *ii* compliance is assessed by performance measures 1, 2, 3, 4, 18, 28, 30, 31, 32, 33, 34, 35, 42 and 44.

two of the last three months, for 88.7% (157 of 177 opportunities) of all checklist item *iv* measures for which data were generated in at least two of the last three months!

10. AT&T asserts that Pacific's performance results for checklist items *ii* and *iv* indicate "a number of areas show[ing] subpar performance."[5] XO asserts that Pacific is providing "sub-standard" performance relative to but one checklist item (checklist item *iv*).[6] For several reasons, both commenters' assertions are without merit and should be rejected.

11. First, as noted above, these commenters ignore Pacific's overall outstanding performance, both with respect to Pacific's measures as a whole, and to those measures encompassing the only two checklist items they discuss. Second, both commenters ascribe significance to fairly minor statistical shortfalls without showing how (if at all) their competitive opportunities have been adversely impacted. These considerations bear emphasis, though ignored by AT&T and XO, because it is well understood that "[p]erformance disparity in one measurement or sub-measurement is unlikely to result in a finding of checklist noncompliance, unless the disparity is dramatic, or absent evidence of competitive impact."[7]

12. Third, even where Pacific has initiated performance improvement plans, the commenters either make no reference to these initiatives or dismiss them as "paper promises" – even though the Commission's "totality of the circumstances" analytical framework envisions

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[4] Checklist item *iv* compliance is assessed by performance measures 5, 6, 7, 8, 9, 9A, 11, 12, 13, 14, 15, 15A, 16, 17, 19, 20, 21, 22 and 23.

[5] AT&T Toomey/Walker/Kalb Declaration, ¶ *55*.

[6] XO Comments at 16.

[7] ***Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region. InterLATA Services in Kansas and Oklahoma,*** Memorandum Opinion and Order, 16 FCC Rcd 6237, ¶ 136 (2001) (*"Kansas/Oklahoma Order"*).

"examin[ing] the evidence further"[8] and even though statistical evidence shows that these improvements are having a positive effect on Pacific's performance.

13. Finally, these CLECs imply that Pacific can only prove the efficacy of its systems and processes if its measured performance is perfect. As is apparent from the foregoing discussion, the Commission does not subscribe to this view. In any case, these commenters' criticisms of isolated and incidental shortfalls do not undermine the ample evidence that Pacific continues to provide efficient California CLECs a meaningful opportunity to compete.

ORDERING

FOCs

14. XO makes no claim relative to Pacific's ordering processes. AT&T's claim that Pacific's ordering processes are deficient rests solely on criticism of Pacific's Firm Order Completion ("FOC") performance. This criticism, in turn, is based on but two of the plethora of submeasures within Measure 2 (Average FOC/LSC Notice Interval) for which Pacific's performance has fallen short of the benchmark standard.[9] These submeasures are Submeasure **2-03** 100 (Average FOC/LSC Notice Interval – Electronically Received/Manually Handled – Resale PBX) and Submeasure 2-04003 (Average FOC/LSC Notice Interval – Electronically Received/Manually Handled – UNE Dark Fiber). Based on this "evidence," AT&T claims that Pacific "does not consistently provide timely . . . FOCs."[10] AT&T's claims are not merely misleading, they are false.

[8] ***Id.***, ¶ 31.
[9] AT&T Toomey/Walker/Kalb Declaration, **¶¶ 61-62.**
[10] AT&T Toomey/Walker/Kalb Declaration, **¶ 57.**

15. As a preliminary matter, it should be noted that the performance results upon which AT&T relies comprise only a miniscule portion of all of the performance results for which Pacific collects and reports data regarding FOC timeliness. Each month Pacific is required to collect and report data for more than 50 submeasures within Measure 2. Through these submeasures' data, Pacific has demonstrated an excellent level of service for the tens of thousands of Local Service Requests ("LSRs") for which it returns FOCs to CLECs each month. While AT&T notes that Pacific fell short of the six-hour benchmark for Submeasure 2-03100 from April through June 2002, the total number of transactions for these months for this submeasure was only 26 (April: 5; May: 7; June: 14). Similarly, AT&T states that Pacific's performance did not meet the same benchmark for Submeasure 2-04003 in June and July. Yet, while Pacific returned FOCs for over 75,000 LSRs received electronically received and processed manually during these months, only ten of these transactions were for UNE-Dark Fiber (June: 5; July: ***5)***. Not unexpectedly, AT&T does not suggest, much less provide evidence, that Pacific's FOC performance has resulted in an adverse competitive impact.

16. Moreover, AT&T ignores Pacific's more recent performance on the two submeasures it targets. For example, Pacific handily met the six-hour benchmark for Submeasure 2-03100 in each of the last three months (July: 4.31 hours; August: 2.31 hours; September: 3.02 hours). And, it has made marked progress relative to Submeasure 2-04003 (July: 8.91 hours; August: 1.07 hours; September: no reportable data).

17. In sum, one cannot assess either Pacific's overall ordering processes or its overall FOC performance based on just a handful of transactions within two FOC submeasures. AT&T also ignores Pacific's excellent performance on the overwhelming majority of FOCs

returned to CLECs (more than 90% of FOCs measures met from May through July 2002), and it ignores improved performance for the two submeasures it discusses. These factors, together with AT&T's failure to demonstrate any adverse impact, compel rejection of AT&T's ordering and FOC claims.

PROVISIONING

Status ***Notices***

18. XO points out that Pacific "failed to reach and maintain parity with respect to DSI loops placed in jeopardy."" Pacific acknowledges that its performance relative to Submeasure 5-24100 (Percent of Orders Jeopardized – UNE Loop 4 wire Digital 1.544 mbps capable/HDSL field work/no field work) did not reach parity from **June** through August. However, in these three months, the percentage of CLECs' orders that were jeopardized averaged **less** than 1%. Moreover, even though Pacific's performance was just shy of parity, XO makes no claim that this shortfall had any detrimental effect on its business. Finally, it is noteworthy that Pacific met the performance standard, in two of the last **three** months concluding in September, for 15 of 16 of the remaining submeasures associated with Measure 5 that generated data during the period.

19. Additionally, XO's discussion fails to consider the percentage of CLECs' DS1 due dates actually met by Pacific's technicians. In analyzing performance data regarding jeopardies, the FCC has found it significant that a section 271 applicant is also held accountable for instances in which jeopardy situations result in missed due dates." In this regard,

[11] XO **Comments** at **16.**

[12] *Kansas/Oklahoma* ***Order,*** ¶ 149.

performance data reflect that Pacific provisions CLECs' DS1 loops on time more than 98% of the time.

20. According to the statewide performance data for Measure 11 (Percent of Due Dates Missed), Pacific misses a very low percentage of due dates for CLECs' DS1 loop installation orders, and has consistently met parity for this measure (*e.g.*, May: 1.98% for CLECs vs. 5.58% for Pacific Retail; June: 1.56% for CLECs **vs.** 2.65% for Pacific Retail; July: 1.34% for CLECs **vs.** 1.67% for Pacific Retail; August: 1.98% for CLECs vs. 4.02% for Pacific Retail; and September: 1.96% for CLECs vs. 3.13% for Pacific Retail). Thus, on performance of far greater significance to CLECs, Pacific has delivered outstanding results.

21. Consequently, the Commission should reject XO's suggestion that Pacific's performance relative to the percentage of DS1 orders jeopardized has been deficient. To the contrary, this aspect of Pacific's DS1-related performance for CLECs, together with the timeliness of Pacific's DS1 loop provisioning, provides efficient CLECs a meaningful opportunity to compete.

22. In support of its claim that Pacific "does not consistently provide timely jeopardy notices," AT&T references Pacific's performance relative to but two of the approximately **20** submeasures associated with Measure 6 (Average Jeopardy Notice Interval) for which CLEC data are typically generated: Submeasure 6-52000 (Average Jeopardy Notice Interval – Missed Commitment – UNE Platform Basic Port and (8db and 5.5db) loop field work/no field **work)** and Submeasure 6-50001 (Average Jeopardy Notice Interval – Missed

Commitment – **UNE** Loop **2** wire digital **IDSL** capable field work/no field work).[13] However, like XO, AT&T fails to present a fair or complete picture of Pacific's performance. Furthermore, it neglects to point out how, if at all, its local entry efforts actually have been compromised by this performance.[14]

23. With respect to Submeasure **6-52000,** AT&T ascribes importance to Pacific's failure to have achieved the **"95%** within **24** hours" benchmark from June through August **2002.** However, the statistical shortfall is not significant at all. When viewed in the broader context of on time performance for the UNE Platform product, Pacific's performance for this submeasure likely has so little impact on **CLECs** and their customers as to be inconsequential.

24. Specifically, of the over **228,000** UNE Platform orders provisioned from June through August **2002,** over **99.9%** of them were provisioned on time (as reflected in the statewide data for Measure 11 (Percent Due Dates Missed – UNE Platform – Basic Port (8db and **5.5** db) Basic Loop – Field Work/No Field Work)). Stated another way, Pacific missed the appointment for, on average, less than one **CLEC** customer in 1,000. As **a** result, Pacific had occasion to send out but a few missed commitment notices. Of these, only 30 were not sent timely over the three-month period. When placed in its proper context, this slight variation in performance simply has no appreciable impact on **a** CLEC's ability to compete, and AT&T does not claim, much less prove, otherwise.[15]

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[13] **AT&T** Toomey/Walker/Kalb **Declaration, ¶¶ 58-60.**

[14] In **fact, it is unclear how any performance shortfalls associated with DSI UNE loops could harm AT&T at all. The September 2002 report for Measure 19 (Customer Trouble Report Rate) reflects that AT&T *****

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[15] **As noted above with respect to XO's jeopardies-related assertion, the Commission has correctly suggested that analysis of jeopardies-related data is more informed when the missed due date rate is considered.** *Kansas/Oklahoma Order,* **¶ 149. Pacific's excellent performance for UNE Platform installation timeliness considerably diminishes the relevance of the statistical shortfalls noted by AT&T.**

25. AT&T's having identified statistical shortfalls in Pacific's performance for Submeasure 6-50001 likewise amounts to little. For this IDSL-related measure, the data reflect that only about 5 missed commitment notices per month were not returned on time during the period from May through August 2002. Such volumes are far too few to have had any discernible impact on CLECs' opportunity to compete (and AT&T does not claim otherwise), especially when, as I reported in my initial affidavit, Pacific misses the due dates of a lower percentage of the CLECs' IDSL loop orders than of its own retail ISDN loop orders

26. Even so, Pacific still is working to improve timeliness of all jeopardy status notices. As described in my initial affidavit, Pacific has identified issues with returning missed commitment notices and is taking the appropriate steps to resolve them.[16] Contrary to AT&T's claim that Pacific's plans are merely promises, Pacific is already working on implementing programming changes in its Decision Support System, the effects of which Pacific anticipates will be evident in performance results in subsequent months."

27. In its final complaint regarding Pacific's provision of status notices, AT&T criticizes Pacific's timeliness in returning completion notices. In particular, AT&T refers to Submeasure 18-00401 (Average Completion Notice Interval – Fully Electronic Fallout (% Within **24** Hours) – LEX/EDI LASR).[18] Here again, AT&T draws on performance

[16] Initial Johnson Affidavit, ¶ 120, n.67.

[17] In any case, both Submeasure 6-52000 and Submeasure 6-50001 capture the timeliness of returning "missed commitment" notices, not notices indicating that an upcoming appointment might not be met. Inasmuch as the initial appointment will, by definition, have already been missed, Pacific's providing of missed commitment notices provides CLECs less useful information.

[18] AT&T Toomey/Walker/Kalb Declaration, ¶ 63. Submeasure 18-00401 assesses the timeliness of returning those few completion notices rejected from fully electronic processing.

shortfalls in three months of the past year (April through June) to unfairly portray Pacific's true performance for CLECs in returning completion notices. Yet, the data reported in this submeasure are but a small number of all completion notices returned to CLECs. Fallout from the fully electronic process averaged less than *0.5%* per month from June through August (from Submeasure 18-00502 – Average Completion Notice Interval – Fallout Level LEWEDI LASR); in other words, only about 500 completion notices per month must be processed manually instead of on a fully electronic basis. Pacific's monthly performance in returning an average of over 135,000 completion notices through the fully electronic process has been excellent, well over 99% on time (June through August). (Submeasure 18-00101 (Average Completion Interval – Fully Electronic – LEWEDI LASR). AT&T's criticism is entitled to no weight, given that it rests on the return of but a tiny sliver (less than 1%) of the overall number of completion notices processed.

28. Likewise, AT&T ignores that Pacific's performance for Submeasure 18-00401 has returned to its previously excellent status. Pacific met the benchmark standard from September 2001 to March 2002 and again in July and August of 2002 (falling only marginally short in September, at 94.93%). AT&T's criticisms should be rejected for this reason as well.[19]

DS1 Loops

29. AT&T and XO focus on Pacific's performance for but two submeasures in an attempt to help prove that Pacific's overall provisioning processes, including the timeliness of its DS1 loop provisioning processes, are flawed: Submeasure 11-10901 (Percent Due Dates

[19] AT&T Toomey/Walker/Kalb Declaration, ¶ **63.**

Missed – North – UNE Loop 4 wire digital 1.544 capable/HDSL) and Submeasure 12-10401 (Percent Due Dates Missed due to **Lack** of Facilities – North – UNE Loop 4 wire digital 1.544 capable/HDSL).[20] AT&T and XO place too far much reliance on these measures' region-specific data.

30. With respect to Submeasure 11-10901, both CLECs fail to acknowledge that Pacific's performance in each of the other three regions met the parity standard in both of the months about which these CLECs complain (June and July). Furthermore, Pacific met the parity standard in each of these areas for the entire five-month period from May through September.

31. Equally important, statewide results reflecting Pacific's DS1 loop provisioning timeliness provide a "more accurate picture" of Pacific's overall performance for California CLECs.[21] According to statewide data for Measure 11, Pacific's installation performance for CLECs' DSI loops has been far more timely than that provided to its own retail operations (May: 1.98% for CLECs vs. 5.58% for Pacific's retail operations; June: 1.56% for CLECs vs. 2.65% for Pacific's retail operations; July: 1.34% for CLECs vs. 1.67% for Pacific's retail operations; August: 1.98% for CLECs vs. 4.02% for Pacific's retail operations; September: **1.96%** for CLECs vs. 3.13% for Pacific's retail operations).

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[20] AT&T Toomey/Walker/Kalb Declaration, ¶ 65; XO Comments at 17.

[21] ***Joint Application by SBC Communications Inc., Soufhwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunication Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri,*** Memorandum Opinion and Order, 16 FCC Rcd 20719, ¶ 108 (2001) (***"Arkansas/Missouri Order")*** (with reference to **DS**1 loop provisioning, stating that "[t]he relevant performance metrics, in this case, are based on statewide performance").

32. Finally, it is worth noting that even in the North region, Pacific's performance for Submeasure 11-10901has improved. In fact, the relative difference in performance is narrowing: June: 6.12% for CLECs vs. 1.90% for Pacific's retail operations; July: **4.13%** for CLECs vs. **1.36%** for Pacific's retail operations; August: 4.17% for CLECs vs. 5.40 for Pacific's retail operations (parity achieved) and September; **4.42%** for CLECs vs. **3.93%** for Pacific's retail operations (parity achieved)).

33. AT&T's further criticism of performance shortfalls for Submeasure 12-10401is equally without merit. Inasmuch as the results of Measure 12 (Percent Due Dates Missed due to a Lack of Facilities) are simply a subset of the results of Measure 11 (Percent Due Dates Missed), AT&T's effort to use these data to provide additional support to the argument should have no effect, as they bring to bear no more credibility to their argument than can be derived from analysis of Measure 11 results."

34. In sum, AT&T's and XO's allegations fail in light of Pacific's solid statewide performance over the past four months and other considerations. As to Pacific's provisioning processes generally, these commenters' failure to address, much less refute, Pacific's performance for the more than 100 submeasures contained within Measure 11 and Measure 12 allows this Commission to conclude that they and other California CLECs have been provided a meaningful opportunity to compete.

[22] **In any case, AT&T offers no evidence suggesting that Pacific's performance for this submeasure (or, for that matter, Pacific's performance for any measure** or **submeasure) has actually resulted in** an **adverse competitive impact to its ability to compete. This is hardly** surprising **given that, according to statewide results for Measure 12, a less than** 1% **difference has prevailed between the relative percentage** of CLECs' **missed due dates (due to lack** of **facilities) and the percentage encountered by Pacific's retail operations.**

35. XO also references statistical performance deficiencies with provisioning quality. Specifically, it challenges Pacific's performance for Submeasure 16-06600 (Percent Troubles in 30 Days for New Orders – North – UNE Loop **4** wire Digital 1.544mbps capable/HDSL), emphasizing what it regards as the ineffectiveness of Pacific's operational improvement plans described in the initial affidavit of Richard Motta (App. **A,** Tab 15) ("Motta Affidavit")." Specifically, XO claims Pacific's use of the HANSEL system to test newly provisioned DS1 loops "is inadequate to ensure the required level of performance."[24]

36. However, Pacific met the parity standard for this submeasure in two of the last three months concluding in September. Similarly, according to statewide results, CLECs encountered a lower percentage of installation reports ("I-30") for DS1 loops in both August and September (August: 10.54% for CLECs vs. 11.35% for Pacific's retail operations and September: 11.76% for CLECs vs. 12.21% for Pacific's retail operations). And, while the converse occurred in July (July: **9.48%** for CLECs vs. 6.15% for Pacific's retail operations), no CLEC other than XO complains of this relatively slight difference in this month. Nor does XO present evidence regarding how, if at **all,** Pacific's performance has adversely affected its ability to compete.

Local Number Portability ("LNP")

37. AT&T complains that "Pacific failed to meet the benchmark standards for Submeasure 46-91400 (Average Time to Restore Provisioning Troubles – LNP Port Out – Out of Service) and Submeasure 46-91500 (Average Time to Restore Provisioning Troubles - LNP Port

[23] XO Comments **at 17-18.**
[24] ***Id.* at 18.**

Out – Affecting Service)."[25] AT&T goes on to describe levels of service in particular months and their divergence from the benchmark. Unfortunately, AT&T's points do not assist the Commission's analysis of Pacific's performance, as they do not address or even acknowledge my initial affidavit's detailed discussion of that performance.[26] Moreover, its points ignore developments in the current California PM Review in which AT&T is a participant. As described in detail in my initial affidavit, these submeasures are subsumed within a measure whose business rules are flawed and which are currently under review by CLECs and Pacific in the PM Review collaborative proceedings now underway.

38. AT&T is well aware that Pacific's performance for Measure **15A** is significantly impacted by the inherent flaw in the measure, though it does not disclose its awareness to this Commission. In late 2001 and early 2002, the PM Review collaborative group discussed the issue associated with this measure (as well as its impact on Measure 15 (Provisioning Troubles)) in a series of conference calls. Proposals to resolve this issue included clarifying the current business rules to reflect that the data to be reported within the Measure **15A** LNP submeasures will include only those troubles clearly associated with provisioning activities. This issue is being discussed in the current PM Review and AT&T has stated it is amenable to jointly developing a fix to this problem. In my opinion, it is less than candid for AT&T to now ascribe Pacific's performance for this submeasure wholly to weaknesses in Pacific's provisioning process, when AT&T knows full well about the weakness in the measure.

[25] AT&T Toomey/Walker/Kalb Declaration, ¶ 79
"Initial Johnson **Affidavit,** ¶¶ 178-179.

Resale

39. AT&T's misplaced criticism of Pacific's evidence demonstrating solid provisioning quality performance is not advanced by AT&T's pointing to data reported for Submeasure 16-05500 (Percentage Troubles in 30 Days on Specials Orders – North – Resale Centrex).[27] AT&T notes that in April and May, Pacific failed to achieve the parity standard for this submeasure. However, as in its previous analyses of Pacific's performance data, AT&T limits its review to only the facts that it finds in support of its argument, but not all the facts that are relevant. For example, AT&T does not note (as Pacific previously explained) that Pacific's performance was likely influenced by one Centrex migration project underway during this time frame in the North area.[28] AT&T also fails to point out that Pacific's performance from June through August 2002 met the parity standard. Finally, performance on this one submeasure cannot overshadow the consistently high level of provisioning quality that Pacific provides CLECs, evidenced by the parity performance of the vast majority of the results for the resale submeasures associated with Measure 16.

MAINTENANCE/REPAIR

40. AT&T claims that Pacific's performance data show that Pacific has failed to provide maintenance and repair services within the same time and with the same degree of quality as the services it provides for Pacific's retail customers.[29] XO makes a similar claim.[30]

[27] AT&T Toomey/Walker/Kalb Declaration, ¶¶ 75-76. Pacific is unable to respond to AT&T's claims about Pacific's performance for Submeasure 16-06502 (Percentage Troubles in 30 Days on Specials Orders – North – UNE Subloop 2 wire digital **xDSL** capable). According to Pacific's monthly performance results reports, no data has ever been reported for this submeasure.

[28] The ECI project, as well as specific plans **to** improve performance for this project, was described in the initial affidavit of Richard Motta, ¶ 21.

[29] AT&T Toomey/Walker/Kalb Declaration, ¶¶ 67-69.

[30] XO Comments at 17.

These claims should be rejected, as they fail to provide a correct and complete analysis of the statistical and other pertinent considerations that demonstrate that CLECs have not been denied a meaningful opportunity to compete.

DSL Loops

41. AT&T points to a lack of parity for the average time to restore maintenance problems on standalone DSL loops.[31] AT&T merely details how often Pacific met the parity standard for Submeasure 21-95801 (Average Time to Restore – UNE Loop 2 wire digital xDSL capable), without discussing whether CLECs suffered competitive harm as a result of this performance. Additionally, AT&T's recitation of Pacific's statistical performance is wrong. AT&T claims Pacific did not meet the parity standard from December 2001 through June 2002. However, not until the CPUC's August 22, 2002 ***Measures Modification Decision II*** did the CPUC establish a parity standard against which Pacific's performance for CLECs could be compared, as I explained in my initial affidavit.[32] As the CPUC explained, the then-existing parity standard assumed a "retail offering by Pacific that never materialized. Consequently, OSS performance for xDSL loop OSS services has not been evaluated in the Performance Incentives Plan monitoring and enforcement mechanisms."[33] In the case of Measure 21, the standard for xDSL capable loops is now a parity comparison to lineshared loops provided to SBC Advanced Services Inc. ("ASI"). Hence, AT&T's discussion is misleading because no assessment of statistical parity for

[31] AT&T Toomey/Walker/Kalb Declaration, ¶ 77.
[32] Initial Johnson Affidavit, ¶ 19 & n.12 (citing OSS 011 Proceeding, Opinion Modifying Decision 01-05-087 to Convert xDSL OSS Performance Measure Standards for the Performance Incentive Plan for Pacific Telephone Company, D.02-08-050 (Aug. 22, 2002) ***("Measures Modification Decision II")*** (App. C, Tab 81)).
[33] ***Measures Modification Decision II*** at 2. The retail offering referred to by the CPUC was a 2 wire digital loop (xDSL loop).

Submeasure 21-95801 could be made, since no retail data existed for the *old* parity standard. AT&T may claim that Pacific performed *better or worse* for CLECs relative to the ***new*** standard during the period of December 2001 to June 2002, but it cannot rest its claim on a statistical parity analysis. The first month in which a parity test was applied was September 2002.

42. In any case, it should be noted that Pacific's relative performance for CLECs for Submeasure 21-95801 has improved over the past three months. Using performance for lineshared loops provided to ASI as the retail comparison, Pacific provided CLECs shorter restoral times, on average, for their xDSL capable loops than Pacific provided for ASI's lineshared loops in July, August and September. The average restoral interval for CLECs in July was 11.78 hours (as compared to 14.47 hours for ASI), in August, 11.25 hours (as compared to 12.83 hours for ASI) and in September, 12.32 hours (as compared to 12.50 hours for ASI). As described in the initial affidavit of Richard Motta, elimination of defective circuit packs in Pacific's broadband network has normalized the performance results for ASI, thus demonstrating that performance was actually better for CLECs. This undertaking by Pacific was not a "paper" promise; rather, the performance data suggest that it has been an effective resolution to the performance issue associated with this submeasure.

43. AT&T also notes that Pacific's repeat trouble report performance has fallen short of the panty standard regarding standalone DSL loops and lineshared DSL loops, relying on **the** results for Submeasure 23-92801 (Frequency of Repeat Reports in a 30 Day Period – UNE 2 wire digital xDSL capable) and Submeasure 23-94000 (Frequency of Repeat Reports in a

30 Day Period – UNE loop 2 wire digital Line Sharing).[34] A detailed description of the difficulties associated with testing of CLECs' DSL loops was included in the initial affidavit of Richard Motta. Along with other planned operational improvements, that affidavit described the new testing procedure being implemented by Pacific in September 2002 for these loops.[35] With implementation of the new "signal" testing procedure, CLECs have also experienced a dramatic decline in repeated reports for standalone xDSL capable loops. Submeasure 23-92801 results reflect that, in August, the rate of repeat reports was 21.60%, while in September, it improved by nearly 25% to 16.69%. AT&T also fails to acknowledge that Pacific met the parity standard for lineshared loops (Submeasure 23-94000) in July and August 2002. In fact, Pacific also met the parity standard for this submeasure in September 2002. Contrary to AT&T's allegations that Pacific's new implemented process improvements are but "unfilled commitment[s]" (AT&T Toomey/Walker/Kalb Declaration, ¶ 73), the performance results demonstrate otherwise.

*DSI **Loops***

44. XO observes that the missed appointment times for maintenance reports for CLECs' DS1 loops are somewhat higher than what is provided to Pacific's retail operations.[36] XO acknowledges Pacific's efforts to improve performance for Submeasure 20-95801 (Percent of Customer Trouble Not Resolved Within Estimated Time – Statewide – UNE Loop 4 wire Digital 1.544 mbps capable/HDSL) have not yet resulted in parity performance. While Pacific has implemented changes in its processes to improve the efficiency with which it handles DS1 loop maintenance, Pacific is working on additional improvement

[34] AT&T Toomey/Walker/Kalb **Declaration, ¶¶ 71-73**
[35] Motta **Affidavit, ¶¶ 36-37.**
[36] **XO** Comments **at** 18-19.

plans to ensure the timely resolution of CLEC troubles. For example, Pacitic has implemented a process whereby its maintenance technicians will contact the field technicians directly when **a** DS1 UNE trouble ticket is being dispatched to the field for resolution. Maintenance center personnel also are closely tracking the progress of each DS1 loop trouble ticket to ensure service restoral is handled expeditiously. Finally, each DSI loop trouble ticket will be reviewed, once closed, to **verify** that the correct procedures were followed in resolution of the trouble and to identify any areas in which additional technician training may be indicated.

45. Yet, it should be noted that some pertinent considerations help place Pacific's maintenance timeliness **in** a more complete perspective. First, according to the data for Submeasure 19-92910 (Customer Trouble Report Rate – Statewide – UNE Loop 4 wire Digital **1.544** mbps capable/HDSL), California CLECs routinely encounter a low rate of DSI loop troubles – under **3%.** Second, according to the **same** data, the CLECs' trouble report rate is consistently lower than that encountered by Pacific's retail operations, (May: 2.80% for CLECs vs. 3.35% for Pacific's retail operations; June: 2.80% for CLECs vs. 2.84% for Pacific's retail operations; July: 2.49% for CLECs vs. 2.90% for Pacific's retail operations; August: 2.84% for CLECs vs. 3.25% for Pacific's retail operations; and September: 2.57% for CLECs vs. 3.17% for Pacific's retail operations). Third, the number of Pacific's DSI loops in service for CLECs is but approximately 2% of all CLECs' loops placed in service by Pacific.[37] Thus, CLECs' customers rarely encounter DS1 troubles in

[37] This percentage represents the ratio between the volumes for DSI loops provided to California CLECs indicated by the September 2002 data for Measure 19 (Trouble Report Rate) and the volumes for all types of loops indicated by the September data for that measure, including basic loops, ISDN Capable loops, DS1 loops, **DS3** loops, xDSL Capable loops, lineshared loops (excluding those provided **to ASI),** EELs and UNE-P.

the first instance, and CLECs' competitive entry choices, based on the types of loops they have had installed for them by Pacific, do not appear to have been adversely affected.

46. Also, operational variances contribute to the minor differences in performance for CLECs. For example, the composition of trouble tickets submitted by CLECs for DS1 UNE loops, as compared to those submitted by Pacific's retail customers on DS1 services, are not accounted for in the data reported by Pacific. **As** shown in the table below, more than 50% of troubles reported by retail customers are closed to "test okay" ("TOK') **or** "no trouble found" ("NTF"). On the other hand, the percentage of CLECs' TOWNTF reports is approximately **25%** – 30%. This is significant with respect to the total results reported. Trouble tickets closed to TOWNTF have shorter maintenance durations (over the three-month period, on average, about one and one half-hours for retail and slightly over two hours for CLECs) and meet the four-hour maintenance restoral interval with much higher frequency.[38] Thus, the higher percentage of these tickets in the retail data cause the appearance of superior retail performance. Because retail results include a higher percentage of TOK/NTF tickets as part of the total results, retail results will necessarily reflect fewer missed maintenance commitments and shorter restoral intervals, even when the maintenance process is in parity."

[38] During the months of July, August and September, retail TOWNTF tickets met the **4** hour standard over **93%** of the time and for CLECs, nearly 90% of the time.

[39] A comparison of trouble tickets where trouble on the line was identified clearly reflects that during this time period, CLECs received a better level of service than Pacific's retail customers.

Trouble Tickets Closed To Found Trouble	July		August		September	
	CLEC	Retail	CLEC	Retail	CLEC	Retail
Commitments not Met	44%	65%	47%	58%	47%	50%
Average Restoral Interval	4.60 Hours	6.22 Hours	4.97 Hours	6.23 Hours	5.10 Hours	5.20 Hours

Trouble Tickets	July		August		September	
Closed To TOK/NTF	CLEC	Retail	CLEC	Retail	CLEC	Retail
Total Troubles	287	1688	342	1895	317	1851
TOK/NTF	**86**	966	111	1074	**82**	**977**
% of Total Troubles	30%	57%	**32%**	**57%**	**26%**	**53%**

47. AT&T and XO note that the average time to restore service on **DS1** loops has fallen short of parity.[40] However, although both CLECs point out the statistical *parity* variation in performance results for Submeasure **21-96001** (Average Time to Restore – Statewide – UNE Loop **4** wire Digital **1.544**mbps capable/HDSL), neither points out that the practical difference in performance is very small. In fact, in the months of July, August and September **2002,** the difference in the restoral intervals for CLEC DS1 loops was no more than **75** minutes in any month. On average, for the three-month period, the difference **was** only slightly more than 30 minutes. And, as noted above, California CLECs encounter a **low** rate of DS1 loop troubles that is lower than that encountered by Pacific's retail operations and a lower rate of short interval TOWNTF maintenance troubles. Thus, once again, these two CLECs focus solely on the statistical difference in performance and make no showing of practical harm to their companies or the CLEC industry at **large.**

*Basic **Loops** (8db and **5.5** db)*

48. AT&T and XO criticize Pacific's performance regarding repeat reports on Basic UNE loops, as reflected in the data for Submeasure **23-92601** (Frequency of Repeat Troubles in **30** Day Period – Statewide – UNE Loop **214** wire 8db and **5.5 db).**[41] Pacific has acknowledged that repeat reports for basic UNE loops have been an area of focus for some

[40] AT&T Toomey/Walker/Kalb **Declaration,** ¶ **78; XO Comments at 17, 19.**
[41] AT&T Toomey/Walker/Kalb **Declaration,** ¶ **74; XO Comments at 17, 19.**

time. XO specifically complains that Pacific's efforts to improve performance in this area, including the implementation of the FIT process, have not worked. This simply is not true. In fact, Pacific's efforts have resulted in its having achieved parity in **two** of the last three months concluding in September 2002 for Submeasure 23-92601. Additionally, Pacific has reduced the overall rate of repeat reports in the past six months by **over** 25% from that experienced in the six months prior to April 2002.[42] Pacific's efforts have surely seen results, notwithstanding claims to the contrary.

***UNE-Platforms** ("UNE-P")*

49. AT&T limits its examination **of** Pacific's UNE-P maintenance performance to the results for Submeasure 19-93600 (Customer Trouble Report Rate – UNE platform – Basic Port and (8.0 db and 5.5 db) Basic loop).[43] In **this** single instance, AT&T also criticizes Pacific's performance for AT&T in May, June and August. Nonetheless, AT&T fails to identify any evidence **of** lost customers or other adverse competitive impact. And while AT&T acknowledges that Pacific made remedy payments for these statistical shortfalls in performance, AT&T provides no evidence suggesting that these remedy payments fell short of any losses AT&T may believe it experienced.

50. From a statistical perspective, AT&T's analysis is also short of the mark. AT&T fails to note that the UNE-P trouble report rate encountered by CLECs is less than 1%, and that this rate is less than 0.2% greater than that experienced by Pacific's retail customers, particularly in the months of June through August 2002. Indeed, AT&T's discussion here,

[42] The average repeat report rate for basic UNE loops from April **2002** to September ***2002*** was **9.45%.** In the **six**-month period **from** October 2001 to March **2002,** the repeat report rate was 13.00%.
[43] AT&T Toomey/Walker/Kalb Declaration, ¶ 70.

as elsewhere, simply points out slight mathematical variations in Pacific's performance data without providing any factual data that Pacific's performance has in any way harmed any CLEC, including AT&T. Rather, the available performance data suggest that the opposite may be true, *i.e.*, Pacific's excellent performance may well have spurred competitive activity. In the months of June through August, the base of CLEC services provisioned on UNE Platforms grew by over 100,000 lines, and between August and September by nearly 90,000 lines, demonstrating a very robust level of activity for this product.[44]

51. Despite this excellent overall trouble report rate, and the miniscule difference in the comparative rates between CLECs and Pacific's retail operations, Pacific is still working diligently to close the gap. As described in the initial affidavit of Richard Motta, in addition to post testing all newly provisioned UNE Platform services to ensure the quality of its provisioning work, Pacific is continuing its efforts to develop process and system improvements to reduce the number of translations troubles experienced on these lines. Pacific also has developed a report to match all retail orders that are removing features on a line against pending UNE Platform migration orders, to prevent features from being removed from these migrating services. This report is reviewed three times a day by Pacific's LSC personnel to ensure **all** pending UNE Platforms orders are included in the matching process. Pacific also is developing additional system upgrades that will allow the Automated Order Generator ("AOG) system to automatically recap all existing features on **a** migrating retail service on to the UNE-P service order and the retail

[44] **This** information **is** based on data drawn from Measure 19 (Customer Trouble Report Rate); according to the data, the total base of UNE Platform services provided to CLECs was 161,200 **in May,** 206,600 **in June,** 255,900 in July, 308,400 in August **and** 394,700 in September.

disconnect order (associated with a UNE Platform migration). Pacific anticipates that these additional process and system improvements will facilitate further reductions in customer trouble report rates for UNE Platform services.

52. In its evaluation of Pacific's section 271 application, the Department of Justice notes performance shortfalls for three UNE-P maintenance and repair submeasures beyond Submeasure 19-93600, including Submeasure 20-97201 (Percent of Customer Trouble Not Resolved Within Estimated Time – Statewide – UNE Platform – Basic Port and 8 db and 5.5 db **loop),** Submeasure 21-97401 (Average Time to Restore – Statewide – UNE Platform – Basic Port and 8 *db* and **5.5** db loop), and Submeasure 23-93600 (Frequency ***of*** Repeat Troubles in **30** Day Period – Statewide – UNE Platform – Basic Port and 8 db and 5.5 db loop).[45] Below, I provide an analysis of the pertinent data and other considerations relative to Pacific's performance.

53. Each of the disparities associated with these submeasures is minimal. For example, with respect to Submeasure 20-97201, CLECs encountered a lower percentage of missed maintenance commitments than Pacific's retail operations in September (6.87% for CLECs vs. 7.56% for Pacific's retail operations); in the previous two months, the greater percentage of missed appointments encountered by CLECs was not more than 2% over that of Pacific's retail operations in either month (July: 9.63% vs. 8.17%; August: 10.21% vs. 8.25%). Regarding Submeasure 21-97401, the average time to restore provided to CLECs was less **than** that provided to Pacific's retail operations in August (7.58 hours vs. 7.59 hours); in July and September, CLECs were provided an average restoral interval

[45] Evaluation of the Department of Justice at n.lO, WC Docket No. 02-306 (FCC tiled **Oct. 29,2002) (*"DOJ's Evaluation").***

approximately one and a half hours greater than that provided Pacific's retail operations (July: 9.37 hours vs. 7.81 hours; September: 9.11 hours vs. 7.52 hours).

54. The timeliness of the maintenance process for UNE-P services is likely to have been impacted by a difference in the way CLECs report UNE-P troubles, as compared to the way retail business POTS customers report troubles on their lines. Based on data gathered for July and August 2002, on average, 35% of UNE-P troubles were reported after 3:00 p.m. For business POTS customers, less than 25% of their troubles were reported after 3:00 p.m.[46] Because there is a higher likelihood that troubles reported late in the afternoon will be carried over to the next day's workload, there is a somewhat greater probability that these maintenance tickets will have longer restoral intervals and more frequently be resolved after the commitment time. [41]

55. Finally with respect to Submeasure 23-93600, while CLECs have encountered a slightly higher percentage of repeat trouble reports than has Pacific's retail operations, the difference did not exceed 2% in any of the last three months, and this difference averaged only about 1.25% over *the three* months (July: 9.01% vs. 8.40%; August: **8.67%** vs. 7.51%; September: 9.15% vs. 7.18%).

[46] Maintenance data for July 2002 reflect **that *CLECs*** reported UNE-P trouble after 3:00 pm **37.5%** of the **time.** In August, the percentage was **33.9%.** For retail, trouble for business POTs lines were reported in tbe late afternoon only 23.5% of the time in July and 24.1% of the time in August.

[47] Based on September 2002 data, Pacific bas determined that most **of** the of CLEC orders for UNE-P service are provisioned to residences, with about 10% provisioned to business. Retail residential customers tend to report troubles more similar to the way troubles are reported for UNE-P services (*i.e.*, more frequently in tbe late afternoon). To better reflect the **mix** of customers currently served by UNE-P, Pacific has requested in the 2002 PM Review collaborative proceeding that the retail analog for UNE-P be changed from a comparison to "Business POTS" services to all "Retail (residence and business) POTS services.

56. Given these minimal differences, it is understandable that no CLEC has complained of Pacific's performance relative to Measures 20, 21 and **23.** Moreover, it bears re-emphasis that the minimal statistical deficiencies are diminished even more by the fact that they affect a very small base of customers, given that the CLECs' UNE-P trouble report rate is less than 1% in the first instance. This provides but another factor that would explain why no CLEC suggests that it has been denied a meaningful opportunity to compete.

57. In sum, Pacific's performance results reflect continued strong wholesale performance. While Pacific's performance for a relatively handful of measures has not achieved the relevant performance standards in all instances, the shortfalls have not likely denied California CLECs a meaningful opportunity to compete. No CLEC has demonstrated otherwise.[48]

THE ACCURACY OF PACIFIC'S DATA CAN BE RELIED UPON, DESPITE AT&T'S CONTRARY ASSERTION

58. AT&T is alone in claiming that Pacific's performance results cannot be trusted due to flaws in the underlying data **and** the processes used to produce the reported results.[49]

[48] AT&T suggests that the performance of Pacific's Mechanized Customer Production Support Center ("MCPSC") should be of concern because its performance is not captured by any performance measurements or subject to payments under Pacific's Performance Incentives Plan. AT&T Comments at 43. Yet, based on its extensive experience in PM Review collaboratives here and elsewhere in the SBC states, AT&T well knows that the proper venue for presenting such an issue is the collaborative review of the California PM Review collaborative proceeding that has been underway since June 2002. In fact, AT&T first mentioned this issue to the collaborative group, including Pacific, on October 16, 2002, after Pacific tiled its section 271 application. At that time, AT&T merely suggested that the MCPSC should be included among the centers whose performance is assessed by Measure 44 (Center Availability), and that the details of the metric could be worked out in the future. AT&T neither presented a proposed business rule to the group, nor did it present its expectations regarding an appropriate performance standard. Inasmuch as this center has been available to CLECs since 2000, it is curious that AT&T has delayed so long in presenting its concerns for consideration by the PM Review collaborative proceeding. In any case, the Commission should permit the CPUC and its PM Review proceeding the same deference the Commission has shown other state commissions in the area of proposed measures. To the extent that AT&T pursues a proposed MCPSC measure in the current California PM Review collaborative, the Commission may be assured that its views will be fully considered by the participants to the collaborative.

[49] AT&T Toomey/Walker/Kalb Declaration, ¶¶ 22-54.